2001

State of Utah, Joann Lorraine Clark v. Mark Thomas Clark : Response to Petition for Rehearing

Utah Supreme Court

Vernon B. Romney; Attorney General; Frank V. Nelson; Stephen G. Schwendiman; Assistant Attorneys General; Attorneys for Appellants.
Martin W. Cutsen; Attorney for Respondents.

THE STATE OF UTAH,
Plaintiff and Appellant,

-vs-

MARK THOMAS CLARK,
Defendant and Respondent.

and

STATE OF UTAH and SHARON O. BOWNE,
Plaintiff and Appellant,

-vs-

KIM P. BOWEN,
Defendant and Respondent.

and

STATE OF UTAH and MARY O. VIGIL,
Plaintiff and Appellant,

-vs-

ALFONSO M. VIGIL,
Defendant and Respondent.

CIVIL NOS. 14132, 14133, 14134

BRIEF OF APPELLANTS' IN ANSWER TO RESPONDENTS' PETITION FOR REHEARING

Appeal from the District Court of Weber County, State of Utah, the Honorable Calvin Gould, presiding.

VERNON B. ROMNEY
Attorney General

FRANK V. NELSON
STEPHEN G. SCHWENDIMAN
Assistant Attorneys General

236 State Capitol
Salt Lake City, Utah 84114

Attorneys for Appellants

MARTIN CUSTEN, ESQ.
453 - 24th Street
Ogden, Utah

Attorney for Respondents

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and	:	
STATE OF UTAH and MARY O. VIGIL, Plaintiff and Appellant -vs- ALFONSO M. VIGIL, Defendant and Respondent	:	

BRIEF OF APPELLANTS

STATEMENT OF THE NATURE OF THE CASE

Appellants agree substantially with Respondent's state- of the nature of the case.

DISPOSITION IN THE LOWER COURT

A ppellants agree substantially with Respondents' statement of the disposition.

RELIEF SOUGHT ON APPEAL

Appellants seek a denial of respondents' Petition for Rehearing and to affirm the Courts' prior decision.

STATEMENT OF FACTS

Appellants agree substantially with Respondents state- ment of Facts.

ARGUMENT

POINT I

RESPONDENTS' PETITION AND BRIEF FOR REHEARING DO NOT RISE TO THE STANDARD SET BY THIS COURT AND THEREFORE SHOULD BE DENIED.

Utah Rule of Civil Procedure 76(e)(1), Petition for Rehearing, states in part:

> "(1) Within 20 days after the filing of the decision of the Supreme Court, either party may petition the court for a rehearing. The petition shall state briefly the points wherein it is alleged that the appellate court has erred. The petition shall be supported by a brief of the authorities relied upon to sustain the points listed in such petition."

Respondents' petition for rehearing lists only one point where this court erred, and that error, in essence, was the holding. Further, counsel for petitioners merely reargues the basic issues of the case which this court fully considered on appeal.

This court, long ago, stated that to justify a rehearing, "a strong case must be made." In re McKnight, 4 U. 237, 9 P. 299, Brown v. Pickard, 4 U. 292, 11 P. 512.

Brown, supra, is most instructive and might well have been written regarding respondents' petition for rehearing:

> "The appellant moves for a rehearing. He alleges that . . . the court erred in its conclusions. Nothing is now submitted as a reason why a rehearing should be granted that was not fully considered in the argument. No showing is made that satisfies the court that it should review its conclusions, and we are not convinced that we erred. We long

> ago laid down the rule that, to justify a rehearing, a strong case must be made. We must be convinced that the court failed to consider some material point in the case, or that it erred in its conclusions, or that some matter has been discovered which was unknown at the time of hearing. Venard v. Old Hickory M & S. Co., 7 Pac. Rep. 408. Where a case has been fully and fairly considered in all its bearings, a rehearing will be denied. People v. Rogerson, 7 Pac. Rep. 410. (Emphasis added)

Nowhere does counsel for petitioners, in his brief for rehearing, argue that the court failed to consider some material point or that some matter has been discovered which was unknown at the time of the hearing. Rather, counsel merely maintains this court erred in its conclusions and reargues his original brief.

The Supreme Court of Nevada, our sister state, has held that where the petition for rehearing is, in effect, a reargument of the petitioner's original brief, the petition should properly be denied. Dredge Corp. v. Husite Co., 369 P.2d 676. Appellants respectfully submit the same law should apply in Utah.

Surely, in light of the history of this case, counsel for respondent cannot seriously argue that this case has not been "fully and fairly considered in all its bearings"; and therefore, in accordance with the rule of the case in Brown, supra, the petition for rehearing should be denied.

POINT II

THE COURT'S DISTINCTION OF THE DIFFERENCE BETWEEN THE RIGHT OF ONE WHO HAS FURNISHED SUPPORT TO A CHILD TO HAVE REIMBURSEMENT, AS DISTINGUISHED FROM AN ADJUDICATION OF THE

AMOUNT A FATHER SHOULD PAY FOR THE CURRENT AND FUTURE SUPPORT OF HIS CHILDREN, SHOULD APPLY TO THE STATE UNDER THE UNIFORM CIVIL LIABILITY FOR SUPPORT ACT.

Counsel again relies on and cites the Restatement of the Law of Restitution-Quasi Contracts and Constructive Trusts, Chapter 5, Benefits Voluntarily Conferred, Section 113, page 464, in his supporting brief. This section and language was cited in Respondents' original appellate brief (at page 18). Since this case was originally, and still is, a matter of statutory interpretation and construction, Respondents' reliance is ill-placed on the "normal rule for reimbursement of a person who has supplied necessities to a third party," found in the Restatement, supra. The Restatement does not apply where there is a statute. Thus, this language twice cited, and twice relied upon by Respondents, simply is not applicable to this case.

In the interest of economy of time, appellants will merely respond briefly to other particular arguments found in Respondents' brief.

At the bottom of page 2, Respondents stated that "the UCLSA was enacted for the sole purpose of obtaining support for needy obligees." This simply is not true. It was also enacted for the reimbursement of the state for funds expended when obligors fail to support their obligees. See U.C.A. 78-45-9.

On page 3, Respondents make an untenable argument to the effect that the state will not seek prospective support orders for a sum certain, because it can "make money" by waiting and seeking reimbursement later. Reality and experience

teach us better. First, the state simply cannot recover 100% of all money expended for obligees from 100% of all derelict obligors. Manpower, time and money does not allow it. Second, the state views the UCLSA as both a preventative and curative statute. We want to cure current support problems, and,more importantly, prevent, by means of future support orders and strict enforcement, future support problems.

On page 5 of Respondents' brief, counsel points out that the State of Utah has a statutory duty to provide support to destitute mothers and children, and thereby argues by implication that the state should pay out welfare and stay out of the recovery business. Appellants submit that there would be no destitute mothers and children were it not for fathers who refused to perform their legal, moral and statutory duty to support their families. The State of Utah fulfills its statutory duty and merely expects fathers in the state to do the same.

CONCLUSION

Based upon appellant's brief, we respectfully urge this court to deny respondents' petition for rehearing, as they have not met their burden of showing wherein this court erred in its conclusion in its decision.

Respectfully submitted,

VERNON B. ROMNEY
Attorney General

FRANK V. NELSON
Assistant Attorney General

STEPHEN G. SCHWENDIMAN
Assistant Attorney General

Attorneys for Appellants